

**CITY OF KANNAPOLIS, NC  
BOARD OF ADJUSTMENT**

**Minutes of Regular Meeting  
Tuesday, January 19, 2016**

The Board of Adjustment met on Tuesday, January 19, 2016 at 6:00 PM at the Kannapolis Train Station, 201 South Main Street, Kannapolis, North Carolina.

**Board Members Present:** Jeff Parker, Chairman  
Jonathan Farmer, Vice-Chairman  
Andrew Baker  
James Palmer  
Colby Meadows  
Ryan Craft  
Boyd Hardin

**City Attorney:** Walter Safrit, II

**Board Members Absent:** Scott Wilson

**Visitors:**

Everette Frick	Christy Wagner	Phyllis Frick
Debra Sossoman	Edith Raffaldt	Richard Raffaldt
Shelia Elliott	Loretta Raffaldt	Jason Barnes
Carolyn Evans	Keith Barnes	Alan Goodman
Bette Thomas	Gwynn Goodman	Jim Hodgers
Matt Doud	Brenda Hodgers	Marlene Beltran
Barbara Palmer	Willie Barnes	Jack Russell
Stanley Palmer	Ronnie Lazenby	Nirav Chiniwalla
Andrew Drucker	Norman Shue	Marty Ford
David Ragan	Cindy Turner	Don Turner
Rebecca Barnes	Barry Shumaker	Jenna Baker
Tim Barnes	Danny Smithson	Scott Ochsenreiter
Bob Nixon	Shana Smith	Stephan Smith
Steve McMatt	Brenda McMatt	Patricia Broome
Brad Patterson	Scott Hester	Karen Hester
Martin Reinhard	Beatrice Reinhard	Laura Dillard
Marjorie Black	Mitchell Sheets	Marg Sheets
Denis Arnold	Sara Arnold	Bryan Delaney
Holli Delaney	Mark Russell	LB McEachern
Robert Parker	Fred Fisher	

**Staff Present:** Zachary D. Gordon, AICP, Planning Director  
Joshua Langen, AICP, Senior Planner  
David Jordon, IT

**Recording Secretary:** Pam Scaggs

1 **CALL TO ORDER**

2 Board Chairman Jeff Parker called the meeting to order at 6:02 P.M.  
3

4 **ROLL CALL AND RECOGNITION OF QUORUM**

5 Recording Secretary Pam Scaggs called the roll. The presence of a quorum was recognized by  
6 Chairman Parker.  
7

8 **APPROVAL OF AGENDA**

9 Chairman Parker asked for a motion to approve the agenda which was made by Mr. Hardin,  
10 seconded by Mr. Meadows and the motion was unanimously approved.  
11

12 **APPROVAL /CORRECTION OF MINUTES**

13 Chairman Parker requested a motion to approve the December 1, 2015 minutes which was made  
14 by Mr. Farmer, seconded by Mr. Palmer and the motion was unanimously approved.  
15

16 **SWORN IN FOR TESTIMONY**

17 Staff members Zac Gordon and Josh Langen, Bob Nixon, Bette Thomas, Jim Hodgers, Danny  
18 Smithson, Scott Hester, Don Turner, Ronnie Lazenby, Barry Shuemaker, Gwynn Goodman,  
19 Robert Tucker and Denis Arnold were sworn in before presenting testimony.  
20

21 **KANNAPOLIS PARKWAY ROGERS TOWNHOMES – CONDITIONAL USE PERMIT**  
22 **(BOA-2015-17)**

23 Planning Director, Zac Gordon, gave a PowerPoint presentation regarding a request for a  
24 Conditional Use Permit (CUP). The applicant, Bob Nixon, is requesting a CUP for single-family  
25 attached homes and single family attached townhomes. The property is located at 3773 Kannapolis  
26 Parkway and is further identified as Cabarrus County PIN #5602-28-4977 and #5602-19-3677.  
27 The property is zoned O-I-CZ (Office-Institutional-Conditional Zoning). Mr. Gordon stated that  
28 notice of the public hearing had been mailed to adjacent property owners on January 5<sup>th</sup>, an update  
29 on January 15 and that appropriate signage was posted on January 5, 2016 on the site.  
30

31 Mr. Gordon directed attention to the aerial and current zoning maps for the subject property as  
32 well as the Future Land Use Map. Mr. Gordon noted that these homes will be part of a larger  
33 development which will include Cabarrus County PIN #5603-10-3716, zoned O-I, C-2 and RL  
34 (Office-Institutional, General Commercial & Residential Low Density) but that tonight's focus  
35 will only be on the single family attached and townhome portion of the development.  
36

37 Mr. Gordon directed attention to a site plan map submitted by JR Developers, LLC where they  
38 proposed a rezoning of 136 acres from AG (Agricultural) and RE (Rural Estate) to RL-CZ  
39 (Residential Low Density Conditional Zoning), O-I-CZ (Office and Institutional Conditional  
40 Zoning) and C-2-CZ (General Commercial Conditional Zoning). The Planning and Zoning  
41 Commission approved this request on February 6, 2008, but was no longer vested due to the  
42 passage of time. The project was to include 100 townhomes, 89 single family lots, and 306,000  
43 sq. ft. of office and retail space, subject to a master plan.  
44

45 Mr. Gordon stated that Mr. Nixon has concurrently submitted a rezoning application to the  
46 Planning and Zoning Commission (Z-2016-01) requesting an O-I – CZ District consistent with the  
47 single-family attached homes and single-family townhomes requested in this CUP request. He  
48 also noted that open space, ingress and egress requirements will be satisfied as part of the proposed



1 overall development plan for the residential subdivision and will be accessible to the  
2 attached/townhome portion. Mr. Gordon also noted that as outlined in Section 6.5.3.6 Required  
3 Improvements of the Unified Development Ordinance (UDO), an amenity center and/or amenities  
4 will be incorporated as part of the larger proposed development and will also be accessible to the  
5 attached/townhome portion.  
6

7 Mr. Gordon stated that approval of BOA-2015-17 by the Board should be contingent upon  
8 approval of case Z-2016-01 from the Planning and Zoning Commission.  
9

10 Mr. Gordon then directed attention to site plans depicting the location of the single-family attached  
11 homes and the townhomes. Mr. Gordon stated that 52 single-family attached (by means of a  
12 storage building) would be constructed along the perimeter and eighty-one (81) townhomes would  
13 be constructed in the middle. One of the site plans detailed access roads to Kannapolis Parkway  
14 as well as the remainder of the development. Another site plan indicated how the entire  
15 development would be completed in phases and remarked that the single-family attached and  
16 townhomes were to be part of Phase 1 as well as the main entrance into the development.

17 Mr. Gordon introduced Joshua Langen, Senior Planner, to provide the Staff Findings of Fact.  
18

#### 19 **STAFF FINDINGS OF FACT**

20 Mr. Langen stated that Article 3, Section 3.5 of the UDO requires the Board of Adjustment to only  
21 approve a conditional use permit if the applicant demonstrates that certain criteria have been met.  
22 Mr. Langen then detailed those criteria:  
23

- 24 1. ***The proposed conditional use will be in harmony with the area in which it is to be***  
25 ***located and in general conformance with the City's Land Use Plan.***

26 Staff response: The proposed use is for a mix of single-family attached homes and  
27 townhomes, which would be developed concurrently with single-family detached homes  
28 on connecting parcels. The proposed use would also be adjacent to commercially-zoned  
29 properties at the intersection of the Kannapolis Parkway and Rogers Lake Road.

30 Amenities will be shared throughout the development, helping to integrate the entire  
31 project and allow future residents to access recreational and adjoining commercial uses  
32 through a series of connected sidewalks and trails. The proposed use would promote a  
33 mix of uses at this intersection and provide a transition between potential commercial  
34 uses and the surrounding single-family detached uses and zoning districts. The project  
35 area is surrounded by existing rural residential uses to the north and south and low  
36 density residential uses to the west. The proposed development area adjoins Kannapolis  
37 Parkway to the east.

38 The 2015 Land Use Plan designates the proposed project area as part of a large Mixed-  
39 Use land use district and adjacent to a Heavy Commercial Mixed-Use land use district.  
40 The proposed use would offer a complementary and integrated use which promotes  
41 mixed-use development. Therefore, the proposed conditional use is considered to be in  
42 harmony with the area in which it is to be located and is considered to be in general  
43 conformance with the City's Land Use Plan.

- 44 2. ***Adequate measures shall be taken to provide ingress and egress so designed as to***  
45 ***minimize traffic hazards and to minimize traffic congestion on the public roads.***



1 Staff response: The proposed use is part of a larger plan to provide commercial uses at  
2 the intersection of Kannapolis Parkway and Rogers Lake Road as well as single-family  
3 development along the western portion of the site. The commercial uses are not defined  
4 or proposed. However, preliminary plans show a matching road cross-section, identical  
5 to the Rogers Lake Road section, to serve as access to the commercial parcels and the  
6 main entrance to the entire development. Furthermore, an alternate access point will be  
7 provided north of the main entrance to allow for additional access to the development  
8 and, specifically, to the single-family detached portion. Also, another access point will  
9 be provided along Kannapolis Parkway south of the main entrance to allow for additional  
10 access to the proposed attached single-family attached homes and townhomes, as well as  
11 for the entire development. The two (2) additional access points will be designated as  
12 right-in/right-out due to the median located along Kannapolis Parkway. NCDOT has also  
13 approved the additional access points at their general location. Therefore, the proposed  
14 measures to be taken to provide ingress and egress to the site and to minimize traffic  
15 hazards and congestion on public roads, are considered adequate.

16 3. ***The proposed use shall not be noxious or offensive by reason of vibration, noise, odor,  
17 dust, smoke or gas.***

18 Staff Response: Staff does not consider the proposed use to be noxious or offensive or  
19 that it will produce vibration, noise, odor, dust, smoke or gas beyond traditional  
20 residential uses.

21 4. ***The establishment of the proposed use shall not impede the orderly development and  
22 improvement of surrounding property for uses permitted within the zoning district.***

23 Staff Response: The proposed use will further the goals of the 2015 Land Use Plan by  
24 providing an alternative use to planned detached single-family uses and existing  
25 commercial zoning. The use is part of a compact and walkable mixed-use development  
26 similar to the mixed-use development form envisioned for this section of Kannapolis  
27 Parkway. The proposed use provides a transition between the commercial zoning and  
28 existing rural residential uses to the south and will be served by an integrated  
29 transportation system. The development project is anticipated to be complemented by  
30 similar land uses within the Mixed-Use district recommended by the 2015 Land Use Plan  
31 as surrounding properties are rezoned in the future to accommodate development  
32 pressures. Therefore, establishment of the proposed use shall not impede the orderly  
33 development and improvement of surrounding property for uses permitted within the  
34 zoning district.

35 5. ***The establishment, maintenance, or operation of the proposed use shall not be  
36 detrimental to or endanger the public health, safety, or general welfare.***

37 Staff Response: There is no danger or detriment to the overall public safety, health and  
38 welfare anticipated to result from the proposed attached single-family attached homes  
39 and townhomes, provided that the site is constructed pursuant to the Unified  
40 Development Ordinance requirements and any conditions of approval.

41  
42 6. ***Compliance with any other applicable Sections of this Ordinance.***

43 Staff Response: The proposed use will be required to comply with Section 15:1.  
44 Coddle Creek Thoroughfare Protection (CCTP) Overlay District of the UDO. The  
45 CCTP Overlay affects development within 200 feet of Kannapolis Parkway. Nearly a



1 third (1/3) of proposed attached single family attached homes and townhomes will be  
2 subject to the CCTP Overlay District requirements. The submitted Architectural  
3 Drawings show the proposed residential units to be in compliance with the provisions  
4 of the Overlay.

5  
6 Therefore, the proposed development is anticipated to be able to conform with the  
7 remaining standards of the UDO and comply with all other applicable sections of the  
8 ordinance  
9

#### 10 **RECOMMENDATION**

11 Mr. Langen stated that based upon the Staff Findings of Fact, as noted above, the conceptual site  
12 plan and compliance with all local, state and federal requirements and regulations, recommends  
13 approval with conditions of the Conditional Use Permit. Mr. Langen cited the conditions listed  
14 below:  
15

- 16 1. The proposed use shall be developed in conjunction with the overall development  
17 proposal, as outlined in the "Kannapolis Parkway" – "Site Plan", "Site Plan  
18 (Townhomes)", and "Phase Map" concept plans, as submitted. The entire development,  
19 to include the proposed single-family attached homes and townhomes, as submitted, as  
20 well as the detached single-family portion, shall be reviewed according to the "Phase  
21 Map."  
22
- 23 2. A Traffic Impact Analysis (TIA) shall be required for the entire development, including  
24 all Phases, before Final Major Site Plan, Sketch Plat or Preliminary Plat review can  
25 begin. The TIA shall recognize the "Phase Map" and shall include recommendations  
26 accordingly. The applicant shall comply with the recommendations of the TIA as well as  
27 traffic circulation requirements of City of Kannapolis Public Works, City of Kannapolis  
28 Planning and NCDOT.  
29
- 30 3. The main entrance at the intersection of the Kannapolis Parkway and Rogers Lake Road  
31 shall be designed and constructed to match the existing intersection eastern portion, or in  
32 conformance with any alternative design as required by City of Kannapolis Public  
33 Works, City of Kannapolis Planning and NCDOT. Construction of the designed  
34 intersection (including modifications to the existing traffic control signal) may be  
35 performed in phases, in accordance with the TIA as well as with City of Kannapolis and  
36 NCDOT requirements.  
37
- 38 4. Sidewalk, curb and gutter shall be installed, where deficient, along the property frontage  
39 on Kannapolis Parkway, during Phase I, as shown on the "Site Plan (Townhomes)" map.  
40
- 41 5. Approval of this CUP application should be made contingent upon approval of Planning  
42 & Zoning Commission case Z-2018-01.  
43

#### 44 **BOARD FINDINGS OF FACT**

45 Mr. Langen stated that in order to determine whether to grant a Conditional Use Permit, the  
46 Board must find that each of the approval criteria, noted above, have been met. If the Board  
47 concurs with the findings of the staff, then no additional findings of fact are necessary and the  
48 staff findings should be approved as part of the decision. If the Board wishes to approved



1 different findings (perhaps as a result of additional evidence or testimony presented at the public  
2 hearing), alternate findings need to be included as part of the Board's findings.

3  
4 Should a Conditional Use Permit be approved, the Board may place conditions on the use as part  
5 of the approval to assure adequate mitigation measures for the proposed use.  
6

### 7 **ACTIONS REQUESTED**

8 Mr. Langen stated that after conducting a Public Hearing, the Board should consider all facts and  
9 testimony and render a decision accordingly to affirm or deny the issuance of a Conditional Use  
10 Permit. Staff is requesting the following Board action:  
11

- 12 • Motion to accept the City's exhibit's into record
- 13 • Motion to approve/revise findings of fact proposed by Planning staff
- 14 • Motion to approve, approve with conditions or deny the issuance of the Conditional Use  
15 Permit  
16

17 Mr. Palmer asked if this CUP for townhomes included one (1) parcel or multiple parcels? Mr.  
18 Gordon responded that the entire development would include multiple parcels but this CUP  
19 request involves two parcels. Mr. Palmer also asked if this CUP were to be approved, would the  
20 remainder of the parcels also be automatically approved or would the applicant have to make an  
21 additional CUP request? Attorney Safrit responded that it would not. Mr. Palmer asked if the  
22 traffic lights would be adjusted? Mr. Gordon responded that any changes would be based upon a  
23 Traffic Impact Study but suspects that since the traffic light is currently situated for a 3-way  
24 intersection, that it would be adjusted for a 4-way intersection. Mr. Palmer also asked if the  
25 proposed property was located in the watershed? Mr. Gordon responded that it was not.  
26

27 Mr. Parker expressed concern that the Board was hearing the case prior to the Planning and  
28 Zoning rezoning case Z-2016-01. Mr. Langen stated that the applicant wanted to push through  
29 to avoid any unnecessary wait times since he would have to wait until February for the case to go  
30 to the Board. Attorney Safrit responded that as long as the Board stated that their decision was  
31 contingent upon the Commissions' decision, then there is no issue. Mr. Parker asked if there had  
32 been any impact studies completed for infrastructure or for the schools? Mr. Gordon responded  
33 that Planning had not conducted impact studies regarding the schools in the past nor was it  
34 stipulated anywhere in the UDO that Planning was required to do so. Mr. Parker asked if any  
35 plans had been submitted for the Kellswater shopping center? Mr. Gordon responded that no  
36 plans have been submitted.  
37

38 Attorney Safrit stated that the Future Land Use Plan was changing and asked Mr. Gordon if the  
39 proposed CUP would be consistent with the new FLUP? Mr. Gordon directed attention back to  
40 the Future Land Use map and explained that the proposed project would be consistent with the  
41 new plan.  
42

43 There being no further questions from the Board, Chairman Parker opened the Public hearing at  
44 6:28 PM.  
45

46 The applicant, Bob Nixon stated that he didn't have anything further to add than what was stated  
47 by Planning staff but that he would be happy to answer any questions the Board may have for  
48 him.  
49



1 Chairman Parker asked if the single-family homes and/or townhomes would be government  
2 subsidized housing? Mr. Nixon responded that it would not. Mr. Parker asked how much each  
3 would be selling for? Mr. Nixon responded that the townhomes would be selling in the mid  
4 \$200k and that the single-family homes would be selling for \$235k-\$275k. Mr. Parker asked  
5 what the timeline was for completion? Mr. Nixon responded that he was hoping that Phase 1  
6 would be completed by spring of 2016 and that Phase 2 and 3 would be completed by 2018. Mr.  
7 Palmer asked for clarification on the timeline. Mr. Nixon responded that it would take a couple  
8 years to complete the entire development.  
9

10 Bette Thomas, 6018 Chardonnay Circle, stated that she is a resident of the Pine Creek  
11 neighborhood, serves on the HOA Board, and is speaking on behalf of several of the Pine Creek  
12 residents. Ms. Thomas stated that they do not approve of the proposed development because the  
13 density is not consistent with immediate adjacent property. She stated that tax value of homes in  
14 the Pine Creek neighborhood were \$1MM and higher. Ms. Thomas cited developments on the  
15 other side of Kannapolis Parkway and noted that the density of those developments were  
16 consistent with what is being proposed and wondered why the applicant is not building on that  
17 side. She said that the Pine Creek and Dogwood neighborhoods were unique to the area and was  
18 the reason why she and a lot of the other residents selected that area. She, along with the other  
19 residents, are worried that there will be negative impacts to their property value and also stated  
20 that the tax revenues for the City would also suffer. Ms. Thomas stated that a similar project had  
21 been submitted and was rejected by the Planning and Zoning Commission. Ms. Thomas asked  
22 the Board, that if they were to approve the CUP request, that the Pine Creek residents are  
23 requesting the applicant to:  
24

- 25 • improve the character of the homes to be consistent with surrounding neighborhoods,
- 26 • increase the minimum lot size
- 27 • install appropriate buffers and stated that 12 foot buffers are not enough and that they  
28 should be at least 25 feet with the planting of trees  
29

30 Ms. Thomas asked the Board to consider the character of surrounding neighborhood, the  
31 increased traffic congestion on both Highway 73 and interstate 85 and the fact that the applicant  
32 is not a resident of the City of Kannapolis. They respectfully request that the CUP request be  
33 denied.  
34

35 Jim Hodgers, 6050 Dogwood Boulevard, stated that he was one of the first residents of the  
36 Dogwood neighborhood. He stated that he and his wife moved to this area due to the good  
37 quality of the homes in the neighborhood as well as the large lot size. Mr. Hodgers stated that  
38 there are only 22 – 23 lots in the Dogwood neighborhood. He said that he is in favor of  
39 development but that quality over quantity should be the focus of the City of Kannapolis and  
40 quoted the Kannapolis Matters newsletter: "The goal of the site analysis is to understand how the  
41 City can maximize the potential value of every property ... We are looking, not just at the  
42 quantity of development you can add, but the quality of development that can occur in downtown  
43 ...". He said that overbuilding may do well for the developer but not for the City of Kannapolis.  
44 Mr. Hodgers expressed concern regarding flooding of not only the land but also the schools. He  
45 thanked the Board for their time and their service and asked them to deny the CUP request.  
46

47 Attorney Safrit asked Mr. Gordon if a Traffic Impact Study (TIS) had been performed? Mr.  
48 Gordon responded that a TIS is not performed until after a final site plan review. Chairman



1 Parker asked if the UDO addresses the amount of houses that can be built within a certain area?  
2 Mr. Gordon replied that Section 4, Table 4.7-1 Dimensional and Density Standards of the UDO  
3 addresses density standards and that zoning dictates density.  
4

5 Danny Smithson, 5540 Dogwood Boulevard, stated that his home is located directly behind the  
6 proposed development and voiced concern that the subject property is not located within the  
7 watershed. Mr. Smithson stated that he already has a flooding issue when it rains and stated that  
8 building up the property to allow for development, will only increase the waterflow onto his  
9 property. He also stated that there are very old trees that would be put at risk if the development  
10 were approved. Mr. Smithson stated that he is against any development.  
11

12 Scott Hester, 5640 Dogwood Boulevard, stated that he and his wife moved to Kannapolis from  
13 Mooresville and that his house would face the proposed development. Mr. Hester stated that he  
14 has a pond on his property and is afraid that children from the proposed development would find  
15 their way to his pond which he feels is a direct contradiction to the Staff Findings of Fact #5  
16 which states: "The establishment, maintenance, or operation of the proposed use shall not be  
17 detrimental to or endanger the public health, safety or general welfare." He asked that if the  
18 proposed were approved, that they add fencing to not only limit access to his property, but to  
19 help hide his pond. Mr. Hester opposes the proposed development and also stated that the  
20 proposed density is too great.  
21

22 Don Turner, 5510 Dogwood Boulevard, stated that he is concerned about the increase in noise  
23 from Kannapolis Parkway and that the proposed density is too high. Mr. Turner also voiced  
24 concern about the water runoff that already exists in the Dogwood neighborhood and is fearful  
25 that it will increase if the proposed development is allowed to move forward. He stated that he  
26 moved to the Dogwood neighborhood in 2008 and owns a home on 1 acre of land. He asked the  
27 Board to consider the integrity of their neighborhood and that they have a responsibility to  
28 existing homeowners to do the right thing.  
29

30 Ronnie Lazenby, 5530 Dogwood Boulevard, stated that he has lived in the Dogwood  
31 neighborhood for 27 years. He moved there because they offered large, beautiful land plots. Mr.  
32 Lazenby stated that there is no place for townhomes and any proposed development in that area  
33 should be similar to those of the Dogwood and Pinecreek neighborhoods.  
34

35 Barry Shuemaker, 5521 Dogwood Boulevard, stated that he is the Chairman of Cabarrus County  
36 schoolboard as well as a resident of the Dogwood neighborhood. Mr. Shuemaker stated that  
37 there are issues with the design of the development in that there are no open spaces built in and  
38 green space is limited. He stated that there is also a harmony issue and that the proposed  
39 development conflicts with the surrounding neighborhoods and is not consistent. Mr. Shuemaker  
40 stated that additional buffering needs to be added and stated that the proposed development is too  
41 dense and should be located near Integra Springs or Kellswater. Mr. Shuemaker also stated that  
42 there is existing water issues and will be worse if the proposed development is approved. He  
43 also voiced concern over the containment of water run-off as well as the overcrowding of  
44 surrounding schools which are projected to be more so even without the proposed development.  
45 Mr. Shuemaker asked if the project were to be approved, that they not allow access to Dogwood.  
46

47 Denis Arnold, 3654 Richwood Avenue, stated that he is a resident of the Pinecreek neighborhood  
48 and wondered what the definition of "Harmony" was and that the City must have a different



1 interpretation of the word. He stated that greenspace is absent from the plan and asked the Board  
2 to consider the nature of the development versus the nature of the surrounding area.  
3

4 Robert Parker, 5760 Dogwood Boulevard, stated that he has lived in the Dogwood neighborhood  
5 for 26 years and has a home on a 69 acre lot. He stated that the proposed development is not in  
6 harmony with his neighborhood. Mr. Parker said that if built, his neighbor's house will flood  
7 from the runoff.  
8

9 Gwynn Goodman, 13000 Mooresville Rd, Davidson, stated that she owns a house at 5520  
10 Dogwood Boulevard and is agreement with all those that spoke before her. She is opposed to the  
11 proposed development.  
12

13 There being no further questions or comments, Chairman Parker closed the Public Hearing at  
14 7:09 PM.  
15

16 Chairman Parker asked for a motion to accept the City's exhibits into record which was made by  
17 Mr. Farmer, seconded by Mr. Meadows and the motion was unanimously approved.  
18

19 Chairman Parker asked for a motion to approve the findings of fact proposed by Planning Staff.  
20 Mr. Meadows stated that he does not agree with the Findings of Fact in that the ingress and  
21 egress will cause traffic issues. Mr. Palmer asked if the main entrance will be installed during  
22 the first phase? Chairman Parker responded "yes".  
23

24 Mr. Palmer stated that even if the development were to be built on the other side of Kannapolis  
25 Parkway, the same traffic issues would still be present. Mr. Farmer stated that there would be no  
26 reason for traffic to travel down Dogwood Boulevard. Mr. Parker responded that there doesn't  
27 appear to be any proposed connections to Dogwood Boulevard.  
28

29 Mr. Meadows reiterated that the additional traffic is not feasible.  
30

31 Attorney Safrit asked the Board to put their current discussions on hold and to consider the  
32 remaining Findings of Fact.  
33

34 Chairman Parker stated that he agrees with some of the testimony presented in that the proposed  
35 development is not in harmony with the rest of the surrounding property. He does not like the  
36 high density, the fact that there are no amenities and the lack of greenspace is detrimental to the  
37 area. Chairman Parker asked that Fact #1 be revised to state that it is not in harmony with the  
38 surrounding area. Attorney Safrit asked for elaboration on why Mr. Parker feels that the  
39 proposed development is not in harmony. Mr. Farmer stated that the zoning clearly calls for low  
40 density but the applicant is proposing high density. Chairman Parker agreed and asked staff how  
41 big the lots were in the Dogwood neighborhood. Mr. Gordon responded that they are 1+ acres.  
42

43 There was additional conversation among the Board concerning the size of lots in both the Pine  
44 Creek and Dogwood neighborhoods compared with size of lots being proposed, traffic issues and  
45 the lack of amenities and greenspace. Attorney Safrit reminded the Board that they cannot state  
46 expert opinions but that if they are not in agreement with 1 of the Findings of Fact, then the rest  
47 of the findings do not matter. They have to be in agreement with all of the Findings of Fact in  
48 order to proceed with an approval.  
49



1 Mr. Palmer asked what was the recourse for the applicant if the request was denied? Attorney  
2 Safrit responded that the applicant would have to appeal Board of Adjustment decisions to  
3 Superior Court and further stated that the applicant could proceed with a rezoning request to the  
4 Planning and Zoning Commission but their decision would not alter the decision made by Board  
5 of Adjustment.  
6

7 Chairman Parker made the motion to revise Findings of Fact #1 to state that the proposed  
8 development was not in harmony with the surrounding neighborhood for the following reasons:  
9

- 10 a) the proposed use for a dense mix of single-family attached homes and townhomes  
11 conflict with the existing rural large lot residential uses adjoining on the south side of the  
12 project area, and
- 13 b) the absence of greenspace for the proposed project is not in general conformance with  
14 the City Land Use Plan.  
15

16 This motion was seconded by Mr. Farmer and was approved, 6 to 1 with Mr. Palmer casting the  
17 dissenting vote.  
18

19 Mr. Meadows stated that he would like to revise Finding of Fact #2 to state that ingress/egress is  
20 inadequate. Chairman Parker said that he understands Mr. Meadows concerns but without a TIS  
21 to identify issues, they can't speculate whether the design is good or bad.  
22

23 Mr. Farmer made the motion to deny the issuance of a Conditional Use Permit which was  
24 seconded by Mr. Meadows and the motion was approved, 6 to 1 with Mr. Palmer casting the  
25 dissenting vote.  
26

27 Chairman Parker called for a 15 minute recess. The meeting was then called to order at 7:48 PM  
28

### 29 **SWORN IN FOR TESTIMONY**

30 Staff member Zac Gordon, Richard Raffaldt, Debra Sossoman, Patricia Broome, James Shutz,  
31 Rebecca Barnes, Jason Barnes, Keith Barnes, Laura Dillard, Stanley Palmer and Tim Barnes  
32 were sworn in before presenting testimony.  
33

### 34 **RAFFALDT – CERTIFICATE OF NONCONFORMITY ADJUSTMENT (BOA-2015-16)**

35 Planning Director, Zac Gordon, gave a PowerPoint presentation regarding a request for a  
36 Certificate of Nonconformity Adjustment (CONA). The applicant, Richard Raffaldt, is requesting  
37 a CONA which would permit his landscaping business to remain on site. The property under  
38 consideration for this CONA is located at 817 Fisher Street, includes the adjacent lot and is more  
39 specifically identified as Cabarrus County PIN #5612-33-2551 and #5612-33-1437. The property  
40 is zoned RM-2 - Residential Medium Density. Mr. Gordon stated that notice of the public hearing  
41 had been mailed to adjacent property owners on January 5<sup>th</sup> and that appropriate signage was  
42 posted on January 5, 2016 on the site.  
43

44 Mr. Gordon directed attention to the aerial and current zoning maps for the subject property as  
45 well as the Future Land Use Map. Mr. Gordon stated that the applicant is applying for the CONA  
46 so that he can retain his existing landscaping business on the property at 817 Fisher Street and the  
47 adjoining parcel to the west (#5612-33-1437). The business had been in operation prior to the city  
48 adopting zoning in 1988, was classified as a legal nonconforming use and so would be permitted  
49 to remain as long as it is not enlarged, expanded or otherwise altered.  
50



1 Mr. Gordon directed the Board's attention to a notice letter that was mailed to Mr. Raffaldt on  
2 August 19, 2015, where the applicant was advised that City staff determined the landscaping  
3 business at this location had been expanded. Mr. Raffaldt was advised that he could make one (1)  
4 of two (2) decisions:

- 5
- 6 1. return the site to conditions which existed in 1998, or
- 7 2. apply for a CONA
- 8

9 Mr. Raffaldt submitted an application for a CONA on November 24, 2015. Mr. Gordon stated  
10 that if the Board approves this request, they shall issue a CONA and the applicant, Mr. Raffaldt,  
11 would be permitted to continue his landscaping business. Mr. Gordon directed the Board's  
12 attention to an aerial view of the applicant's property which accompanied the August 19<sup>th</sup> letter.  
13 Mr. Gordon detailed the property as well as the adjoining parcel and pointed out the various  
14 structures and improvements to the site. A secondary map was presented depicting proposed site  
15 improvements by the applicant which includes extending the existing fence and additional  
16 landscaping.  
17

18 Mr. Gordon stated that Section 13.1.6.1 of the Unified Development Ordinance (UDO) states: "*A*  
19 *Certificate of Nonconformity Adjustment shall be required to enlarge, expand or otherwise alter*  
20 *any Nonconforming Use or Structure as set forth in this Section 13.1. A Certificate of*  
21 *Nonconformity Adjustment shall be issued by the Board of Adjustment subject to the*  
22 *requirements of this section.*"  
23

24 Mr. Gordon advised that the Board will need to establish Findings of Fact associated with this  
25 request. He stated that the Staff has established their findings and the Board can either agree  
26 with Staff findings, revise them or establish their own. Mr. Gordon then reviewed the Staff  
27 Findings of Fact.  
28

## 29 **FINDINGS OF FACT**

- 30 1. **Noise - Does the nonconformity create noise above and beyond levels considered**  
31 **normal to the area?**

32 The applicant has been operating his landscaping business since just prior to the  
33 adoption of zoning regulations in 1988. While there has been an expansion of this  
34 business since 1988, staff does not believe that any increase in noise has risen beyond  
35 levels that would be considered normal for the area.  
36

- 37 2. **Traffic - Does the nonconformity generate or have the potential to generate**  
38 **a significantly higher volume of traffic than surrounding land use?**

39 The applicant's landscaping business generates a low volume of traffic (typically one  
40 truck travelling to and from the site on a daily basis) and that even with the expansion  
41 of this business, the volume of traffic has not changed significantly, nor does staff  
42 believe that there is a potential for traffic volumes higher than surrounding land uses.  
43

- 44 3. **Other measurable, physical effects - Does the nonconformity generate any other**  
45 **negative effects including but not limited to: dust, air pollution, foul smell, etc.?**

46 It does not appear that the applicant's landscaping business generates any appreciable  
47 negative environmental effects such as dust, air pollution or odor.  
48

- 49 4. **Surrounding property values - Does the nonconformity detract from the**  
50 **prevailing property values?**



1 A review of the County tax assessor records does not appear to indicate that the  
2 existing landscaping business detracts from the values of adjoining properties.

4 5. **Aesthetics - Does the nonconformity compliment or detract from the overall  
5 aesthetic character of the area?**

6 The applicant has previously installed fencing and landscaping to screen his  
7 landscaping business from adjoining properties and is intending to supplement these  
8 improvements with additional screening as noted on the enclosed "Proposed Site  
9 Improvements" plan.  
10

11 **RECOMMENDATION**

12 Mr. Gordon reminded the Board that in order to determine whether to grant a Certificate of  
13 Nonconformity Adjustment, they must find that each of the five criteria noted above have been  
14 met. If the Board concurs with the staff assessments for each of the criteria, then no additional  
15 findings of fact are necessary and the staff findings should be approved as part of the decision.  
16 However, if the board wishes to approve different findings (perhaps as a result of additional  
17 evidence, personal knowledge or testimony presented at the public hearing), alternate findings  
18 need to be included as part of the Board's findings.  
19

20 Mr. Gordon stated that based upon an assessment of the criteria found in Section 13.1.6.3 of the  
21 UDO, staff recommends approval of the Certificate of Nonconformity Adjustment requested by  
22 Mr. Raffaldt. He added that the recommendation includes the following conditions:  
23

- 24 1. There be no further expansion of the applicant's landscaping business at this location  
25 without the necessary approvals;
- 26 2. All enhancements shown on the "Proposed Site Improvements" plan, submitted as  
27 part of the applicant's CONA request, are installed within 6 months of any final order  
28 granted by the Board of Adjustment for this approval.  
29

30 Should a Certificate of Nonconformity Adjustment be approved, the Board may impose such  
31 reasonable conditions as will ensure that the use of the property to which the certificate applies  
32 will be as compatible as practicable with the surrounding properties. Any approval granted will  
33 "run with the land" and subject all future property owners to the same restrictions. Mr. Gordon  
34 clarified by stating that the Board may impose additional restrictions on the property or modify  
35 as they feel necessary.  
36

37 **ACTIONS REQUESTED**

38 The Board should consider all facts and testimony after conducting the Public Hearing and  
39 render a decision accordingly to affirm or deny the issuance of a Certificate of Nonconformity  
40 Adjustment (CONA). Staff is requesting the following Board action:  
41

- 42 1. Motion to accept the City's exhibits into the record
- 43 2. Motion to approve/revise the findings of fact proposed by Planning staff
- 44 3. Motion to approve (approve with conditions) (deny) the issuance of the Certificate of  
45 Nonconformity Adjustment  
46

47 Attorney Safrit asked for clarification that the additions since 1988 were the shop and the storage  
48 building on the west side of the property. Mr. Gordon confirmed that to be true. Attorney Safrit  
49 asked if those were acquired after 1988? Mr. Gordon responded that the property has been under



1 the same ownership since before 1988 but that site improvements and enlargement of the  
2 property has occurred which brought it to Planning staff attention.

3  
4 Chairman Parker asked what material the fence is made of now? Mr. Gordon responded that it is  
5 a wooden fence.

6  
7 There being no further questions from the Board, Chairman Parker opened the Public hearing at  
8 8:02 PM.

9  
10 Richard Raffaldt, 323 Small Ave, stated that he is the owner of the landscaping business and is  
11 shocked that the issue has gotten this far. He stated that about a year ago, a staff member  
12 knocked on his door and he has since had numerous meetings with Tony Cline and Zac Gordon  
13 and have complied with everything that they have asked him to do. Mr. Raffaldt stated that he  
14 has installed a fence and has graded due to some water issues. He stated that he gets storm water  
15 run-off across his property every time it rains and that it runs down into the shop of the neighbor  
16 behind his property but that is beyond his control. Mr. Raffaldt stated that he has nothing against  
17 those that have complained against him and has nothing bad to say about them but he wants  
18 resolution. He stated that he is willing to do what is necessary to make this a comfortable  
19 situation. Mr. Raffaldt stated that for 29 years, the neighbors behind him used his property to  
20 access their garage and is upset that they are now complaining about him. He asked the Board to  
21 take into consideration that he has cooperated for over a year with the City.

22  
23 Debra Sossoman, 2704 Friendly Avenue, stated that Mr. Raffaldt is a good neighbor, has never  
24 bothered anyone and helps anyone who needs it, even the neighbor who has raised complaints  
25 against him. She stated that he is a good person to have in the neighborhood and thinks that it is  
26 wonderful that someone could build and maintain their own business and also be a good  
27 neighbor. Ms. Sossoman brought a picture with her depicting where her house is located and  
28 stated that her house is at the lowest point of the neighborhood and gets everyone's water run-  
29 off. She stated that if she could pick her neighbor, she would choose Mr. Raffaldt. She said  
30 there is no noise associated with his business or traffic issues. Ms. Sossoman stated that Mr.  
31 Raffaldt's family planted a row of trees and also installed a fence and had the consideration to  
32 put the smooth side out facing the neighbors.

33  
34 Patricia Broome, 2711 Lyla Avenue, said that she has known Mr. Raffaldt since he was a child.  
35 She stated that Mr. Raffaldt's parents and his grandparents would do anything for anyone in the  
36 community and that has rubbed off on Richard. Ms. Broome stated that her husband is disabled  
37 and is unable to do repairs around the house. She called Mr. Raffaldt to help with her garden and  
38 he has done so for the past seven or eight years without being paid and that a person couldn't ask  
39 for a better neighbor. Ms. Broome stated that she has neighbors that don't care for their property  
40 and others that sell drugs. She said she never even hears Mr. Raffaldt unless she calls on him to  
41 do something for her. Mr. Raffaldt has offered to cut her grass on several occasions. Ms.  
42 Broome asked the Board to approve Mr. Raffaldt's request so that he could remain in the  
43 neighborhood.

44  
45 James Shutz, Fisher Street, stated that Mr. Raffaldt is an outstanding person and that he has  
46 always helped out in the community. He said that there has never been any noise associated with



1 Mr. Raffaldt's business and he never even knows that Mr. Raffaldt is working unless he sees him  
2 coming down the street.

3  
4 Stanley Palmer, 903 Fisher Street, has lived there for 64 years and said that Mr. Raffaldt has  
5 helped him and helps everyone in the community. He said that Mr. Raffaldt has not hurt his  
6 property but has made improvements and doesn't understand why he is being bothered when  
7 there are other neighbors who do not take care of their property. Mr. Palmer said that if Mr.  
8 Raffaldt is made to move, he wants action taken against those that do not take care of their  
9 property. He stated that Mr. Raffaldt is a good man who would do anything for anyone and not  
10 expect payment. Mr. Palmer stated that he witnessed Mr. Raffaldt and his brothers growing up  
11 and that Mr. Raffaldt's father helped him start and build his business prior to becoming a City.  
12 Mr. Palmer thanked the Board for their time and asked them to allow Mr. Raffaldt to continue  
13 his business.

14  
15 Rebecca Barnes, 175 Troutman Rd – Rockwell, NC, stated that she is speaking on behalf of  
16 Willie Barnes, the adjacent property owner, at her request. Ms. Barnes said that no one speaking  
17 against Mr. Raffaldt feels any differently about him than anyone that spoke before her and agrees  
18 that he is a good man. She stated that Willie Barnes' initial complaint regarding this property is  
19 the continued enlargement, expansion and other alternations that have occurred following the  
20 1988 annexation. While it's never been her intention to force Mr. Raffaldt out of business, he  
21 has a right to run his business, but he also has the responsibility to follow zoning ordinances just  
22 like any other Kannapolis citizen or any other business owner. Ms. Barnes asked that in making  
23 their decision, the Board considers review of the following concerns which directly affect noise,  
24 other measurable physical effects, surrounding property values, and aesthetics.

25  
26 Ms. Barnes stated that there has been an expansion of the gravel parking and storage lot using  
27 stone and impervious material without proper approved site plan including erosion control and  
28 storm water runoff. She said that the parking lot, at the time of annexation, was grass which  
29 allowed for the natural drainage of water along the property line. Ms. Barnes stated that recently  
30 Mr. Raffaldt installed a privacy fence on the property line and now his property has been graded  
31 to a centralized point. She asked for permission from the Board to pass out pictures of Willie  
32 Barnes' property that will demonstrate the issues previously stated (attached as Exhibit A) and  
33 Mr. Farmer responded "yes". Ms. Barnes directed the Board's attention to picture #1 which  
34 illustrates the privacy fence with a "rip rap" stone outlet installed to slow water run-off. Ms.  
35 Barnes stated that due to the severity of the flooding and damage to property and buildings, it has  
36 been necessary to build a temporary berm to slow the water and prevent further damage. The  
37 force of the water has washed out areas of the berm as depicted in pictures #2, 3 & 4. Ms.  
38 Barnes directed the Board's attention to pictures #5, 6 & 7 to illustrate damage to the building  
39 and stated that it requires immediate attention to prevent further flooding and structural damage.

40  
41 Ms. Barnes asked the Board to consider the following when making their decision:

- 42  
43 1. Removal of an old "Unijax" trailer bed that has axels and wheels removed and is on  
44 the ground approximately 18" from the property line, serving as storage with a lean-to  
45 that has been added (picture #8);  
46 2. Removal of storage of horse trailers, other trailers, trucks, tractors and other unused  
47 and inoperable items/vehicles added since annexation and now stored on the property;



- 1 3. Eliminate trucks parked on the property line at the back window of Barnes house
- 2 creating noise and fumes
- 3 4. Any continued enlargement, expansion, and otherwise altering of the business and
- 4 property be stopped and that no additional equipment, storage or additions be added
- 5 to the Raffaldt business property.
- 6

7 Ms. Barnes thanked the Board for their consideration.

8  
9 Attorney Safrit showed Ms. Barnes the site plan for the proposed improvements and asked her to  
10 confirm the location of the current privacy fence. Attorney Safrit stated that Ms. Barnes  
11 confirmed that the red line indicated on the Proposed Site Conditions map showed the existing  
12 privacy fence.  
13

14 Jason Barnes, Fisher Street, asked if the aerial photo could be displayed again and then stated  
15 that he and Mr. Raffaldt have had a long standing friendship. Mr. Barnes stated that one of the  
16 issues is the expansion of the business from 1988 to present time and directed attention to the  
17 gravel driveway on the aerial photo. He noted what can't be seen in the photo is that the  
18 driveway has been expanded towards the Barnes residence and feels like some of the water  
19 issues could have been alleviated had the driveway been expanded towards the back of the  
20 property. Mr. Barnes stated that he personally feels that Mr. Raffaldt has every right to operate  
21 his business but that it should be done so in a responsible manner.  
22

23 Keith Barnes, Fisher Street, stated that there is a single-wide trailer located on the property and  
24 stated that someone is living there. He questioned whether that was permissible.  
25

26 Laura Dillard, 2609 Lyla Avenue, stated that she has lived in her home since 1968. Ms. Dillard  
27 stated that 27 years ago, Fisher Street was a gravel road and that Mr. Raffaldt added dirt and  
28 gravel and she thinks had he not done so, the water problems that Ms. Barnes is experiencing  
29 would be worse. She believes that Mr. Raffaldt has tried to do his best to make improvements to  
30 help alleviate the water issues and that the complaints have been handled wrong. Ms. Dillard  
31 stated that she contacted the City regarding water problems on her property and was told that  
32 "water will take its course" and feels that is what's happening on the Barnes' property. She  
33 stated that expecting one man to be responsible for all the water run-off is unreasonable and that  
34 Mr. Raffaldt has been an asset to the community and is speaking in favor of Mr. Raffaldt.  
35

36 Tim Barnes, 175 Troutman Road – Rockwell, NC, stated that he and his family went to the  
37 Raffaldt property on a Sunday evening to help construct the fence and even offered to help pay  
38 for half but that Mr. Raffaldt refused payment.  
39

40 There being no further questions or comments, Chairman Parker closed the Public Hearing at  
41 8:21 PM  
42

43 Chairman Parker asked for a motion to accept the City's exhibits into record. Mr. Farmer made  
44 the motion to accept the City's exhibits into record as well as the exhibit's provided by the  
45 Barnes family which was seconded by Mr. Palmer and the motion was unanimously approved.  
46

47 Chairman Parker asked for a motion to approve or revise the findings of fact proposed by  
48 Planning Staff. Mr. Palmer asked if there was validity in the set-back as it relates to the  
49 ordinance from the property lines, specifically referencing the Unijax building? Mr. Gordon



1 responded that there is a requirement in the UDO that addresses set-backs related to accessory  
2 structures but that he would have to verify once back in the office. Mr. Palmer asked if it is the  
3 City's opinion that this is a permanent building or a mobile unit? Mr. Gordon responded that the  
4 structure is a mobile unit because it is much like a pod. Mr. Farmer asked for verification of the  
5 Barnes residence on the aerial map. Mr. Gordon directed the Board attention to the Barnes  
6 residence. Mr. Farmer asked for verification of the building that is being damaged by the water.  
7 Mr. Gordon directed the Board's attention the storage building. Mr. Palmer asked if the  
8 unsurfaced gravel on the Raffaldt property is causing excessive run-off onto the Barnes property  
9 and that is there complaint? Mr. Gordon responded that he believes that is the complaint of the  
10 Barnes family.  
11

12 Chairman Parker asked for a motion to approve or revise the findings of fact proposed by the  
13 Planning Staff. A motion to approve was made by Mr. Palmer, seconded by Mr. Meadows and  
14 the motion was unanimously approved.  
15

16 Chairman Parker asked for a motion to approve, approve with conditions or deny the issuance of  
17 the Certificate of Nonconformity Adjustment. Mr. Palmer made the motion to approve with the  
18 conditions provided by Staff as well as to include that the setback defined in the UDO for  
19 accessory structures is confirmed. Chairman Parker confirmed that he has a motion on the floor  
20 to approve the Certificate of Nonconformity Adjustment with conditions provided by Staff as  
21 well as the condition that the setback for accessory structure regarding the Unijax building is  
22 confirmed and adhered. Attorney Safrit made the comment that water is considered a common  
23 enemy by all property owners and does not know that adding gravel is an expansion of business,  
24 but that if property is being damaged due to something done on another property, that is actually  
25 a civil court issue and not a Board of Adjustment issue unless the Board determines that adding  
26 gravel is an expansion of the business.  
27

28 Chairman Parker agreed that everyone has problems with water and it appears that Mr. Raffaldt  
29 has worked with neighbors to try to make this situation better. He added that a person can only  
30 do the best he can and hopefully the problem will take care of itself. Attorney Safrit confirmed  
31 that if there is a set-back violation, it needed to be added to the conditions.  
32

33 Chairman Parker reminded the Board that there is a motion on the floor to approve the  
34 Certificate of Nonconformity Adjustment with the conditions provide by Staff as well as the  
35 condition that the setback for accessory structure regarding the Unijax building is confirmed and  
36 adhered which was seconded by Mr. Meadows and the motion was unanimously approved.  
37

### 38 **ORDERS FOR APPROVAL**

39

40 **Food Lion – Certificate of Nonconformity Adjustment (BOA-2015-15)** – This Order is for  
41 approval of a Certificate of Nonconformity Adjustment (CONA). The CONA will allow for a  
42 wall mounted sign measuring 206 square feet, where a maximum of 120 square feet is allowed.  
43 The property is located at 358 Oak Avenue Mall Drive and is further identified as Cabarrus  
44 County PIN # 5613-59-3915. The property is zoned CC – Center City District.

45 Chairman Parker asked for a motion to approve the Order as was presented which was made by  
46 Mr. Meadows, seconded by Mr. Palmer and the motion was unanimously approved.  
47




1 **OTHER BUSINESS**

2 Mr. Gordon noted that the next Board of Adjustment meeting will be held on Tuesday, February  
3 16, 2016.  
4

5 **ADJOURN**

6 There being no further questions or comments, Chairman Parker asked for a motion to adjourn  
7 which was made by Mr. Farmer, seconded by Mr. Baker and the motion was unanimously  
8 approved.  
9

10 The meeting was adjourned at 8:42 PM on Tuesday, January 19, 2016.  
11  
12  
13  
14  
15

  
\_\_\_\_\_  
Jeff Parker, Chairman  
Board of Adjustment

  
\_\_\_\_\_  
Pam Scaggs, Clerk to the Board  
Board of Adjustment